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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**CELA**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6295  
Date Complaint Filed: May 19, 2010  
Date of Notification: May 26, 2010  
Date of Last Response: August 10, 2010  
Date Activated: August 18, 2010

**Expiration of Statute  
of Limitations**

Earliest: January 12, 2015  
Latest: May 28, 2015

**COMPLAINANT:**

Samuel Lieberman

**RESPONDENTS:**

Sue Lowden for US Senate and Bob Beers, in his  
official capacity as treasurer  
Carl Giudici  
Sue Lowden

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(8)(A)  
2 U.S.C. § 441a(a)(1)(a)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 434(b)  
11 C.F.R. § 100.52(d)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

MUR: 6307  
Date Complaint Filed: June 3, 2010  
Date of Notification: June 8, 2010  
Date of Last Response: August 10, 2010  
Date Activated: August 30, 2010

**Expiration of Statute  
of Limitations:**

May 26, 2015

**COMPLAINANT:**

Samuel Lieberman

**RESPONDENTS:**

Sue Lowden for US Senate and Bob Beers in his  
official capacity as treasurer  
Sue Lowden

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 441a(a)(1)(a)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 434(b)  
11 C.F.R. § 102.9(e)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

Samuel Lieberman, Chairman of the Nevada State Democratic Party, filed the complaints in MURs 6295 and 6307. In MUR 6295, complainant alleges that Carl Giudici made an excessive contribution to Sue Lowden and Sue Lowden for US Senate and Bob Beers, in his official capacity as treasurer, ("Committee") by providing what complainant described as a "luxury recreational bus" ("recreational vehicle") for campaign use, which the Committee accepted and failed to accurately report. In response, the Committee states that Giudici and the Committee entered into a lease agreement for the recreational vehicle in January 2010 that provides that the Committee, as lessee, will not acquire any legal or equitable interest in the recreational vehicle, but has the right to use and operate the vehicle at a rate of \$95 per day during the terms of the lease. The Committee also states that a rental rate of \$95 per day is the fair market value for a vehicle of similar year, model and condition to the vehicle being leased. Because it appears that a *bona fide* lease existed, and \$95 per day was within the fair market value range for this particular vehicle, we recommend that the Commission find no reason to believe that Carl Giudici made, or that Sue Lowden or the Committee accepted, an excessive contribution, or failed to accurately report the payments for the recreational vehicle.

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1 In MUR 6307, complainant alleges that the Committee spent \$18,000 in general election  
2 contributions on the primary election. The Committee responds that it did not knowingly spend  
3 general election funds, but spent them as the result of a cash-flow accounting error, and that it  
4 returned all general election funds to the contributors within three weeks after the primary  
5 election ended. Based on the Committee's assertions, and no information to the contrary, we  
6 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation  
7 that the Committee violated 2 U.S.C. § 441(f) and 11 C.F.R. § 102.9(e)(2), and send a cautionary  
8 letter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). In regard to the allegation that the  
9 Committee failed to report the spending of the general election funds, the Committee reflected  
10 these expenditures in the various disbursements disclosed on its 2010 Pre-Primary Report.  
11 Therefore, we recommend that the Commission find no reason to believe that the Committee  
12 violated 2 U.S.C. § 434b. We also recommend that the Commission find no reason to believe  
13 that Sue Lowden violated the Act. Finally, we recommend that the Commission close the files in  
14 both MURs 6295 and 6307.

15 **II. MUR 6295**

16 **A. Factual Background**  
17

18 The complaint and supplemental complaint ("complaint") in MUR 6295 allege that Sue  
19 Lowden and the Committee accepted an excessive contribution from Carl Giudici by failing to  
20 report the full value of the Committee's use of a recreational vehicle leased from Giudici. *See*  
21 Complaint at 1. Specifically, the complaint, citing an attached newspaper article in the *Las*  
22 *Vegas Sun*, dated May 17, 2010, alleges that the Committee promoted the Lowden campaign by  
23 touring the state in the recreational vehicle and, at a cost of \$6,800, affixed the campaign logo  
24 on the vehicle along with a picture of Sue Lowden and other campaign graphics. *Id.* The

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1 newspaper article reports that the Committee's attorney initially stated that the Committee did  
2 not pay Giudici on the days when Lowden was not using the bus to tour the state, but the  
3 campaign reportedly later retracted this assertion. *See* Attachment A. The complaint alleges that  
4 based on the news article, the arrangement between the Committee and Giudici is unclear,  
5 because originally, Sue Lowden reportedly said a supporter had donated the vehicle to her, but  
6 later reportedly stated that Giudici owned the vehicle and was leasing it to the Committee.  
7 Complaint at 2. According to the news article, records of the Nevada Department of Motor  
8 Vehicles ("Nevada DMV") list Lowden as a title-owner of the vehicle, and the campaign's  
9 attorney reportedly stated that Sue Lowden was listed on the vehicle registration for insurance  
10 purposes. *See* Attachment A. The complaint, citing a May 20, 2010 Associated Press report,  
11 alleges that Lowden also reportedly stated that she was on the vehicle title for registration  
12 purposes, but that the Nevada DMV reportedly maintains that a person cannot be listed on a  
13 Nevada vehicle title without being considered its owner and it does not recognize private leases  
14 to determine legal ownership. *See*  
15 [http://www.nevadaappeal.com/apps/pbcs.dll/article?AID=20100520/NEWS/100519450/1070&P](http://www.nevadaappeal.com/apps/pbcs.dll/article?AID=20100520/NEWS/100519450/1070&ParentProfile=1058&template=printart)  
16 [arentProfile=1058&template=printart](http://www.nevadaappeal.com/apps/pbcs.dll/article?AID=20100520/NEWS/100519450/1070&ParentProfile=1058&template=printart). The complaint alleges that regardless of how the  
17 transaction is structured, the Committee has not reported the full value of its use of the  
18 recreational vehicle. Complaint at 2. According to the complaint, the market rental rate for the  
19 vehicle in question could be as high as \$4,500 per week, but that the Committee reported in-kind  
20 contributions of only \$2,200 from Carl Giudici and \$1,885 from Elsie Giudici to use the vehicle  
21 in November 2009. *Id.* at 2 and 3. The complainant alleges renting the vehicle below the fair  
22 market value results in the Committee accepting an excessive contribution from Giudici. *Id.*

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1 In response, Sue Lowden and the Committee state that Giudici did not donate the  
2 recreational vehicle to the Committee, and Ms. Lowden should have described the pre-lease  
3 transactions as in-kind contributions instead of a donation. See Response at 1.<sup>1</sup> According to the  
4 response, Carl and Elsie Giudici offered the Committee the use of their 2001 Monaco Executive  
5 Motor Home for campaign purposes, and on January 12, 2010, Carl Guidici and the Committee  
6 entered into a lease agreement, which is attached to the Committee's response. See *Id.* at 2. The  
7 Committee points out that the lease agreement provides that the Committee, as lessee, will not  
8 acquire any legal or home lease equitable interest in the recreational vehicle, but will have the  
9 right to use and operate the vehicle at a rate of \$95 per day during the ten-month term of the  
10 lease. *Id.*, Attachment A at 1, paragraph 2.

11 Sue Lowden and the Committee cite to an article in the *Las Vegas Review Journal*,  
12 attached to their response, reporting that its survey of Las Vegas rental rates for similar new  
13 luxury vehicles determined that the rental rate for new vehicles ranged from fifty dollars per day  
14 in winter to several hundred dollars per day in "summer high season." *Id.*, Attachment B at 1.  
15 Given that the recreational vehicle leased by the Committee was ten years old and in need of  
16 improvements, the response states that the \$95 rental rate per day is well within the fair market  
17 value range. *Id.* at 2. The response further states that the Committee made needed capital  
18 improvements to the recreational vehicle in February 2010 totaling \$11,082, inuring to the  
19 benefit of the owner, and, as agreed to with Giudici, reported those improvements on the  
20 Committee's April 2010 Quarterly Report as in-kind lease payments. *Id.* At a rate of \$95 per  
21 day, the capital improvements totaling \$11,082 would represent 116 days ( $\$11,082/\$95 =$   
22 116.65), or approximately four months' rent. The response acknowledges that before executing

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<sup>1</sup> Carl Guidici did not respond to the complaint.

1 the lease agreement, Guidici allowed the Committee to use the recreational vehicle, which the  
2 Committee reported as in-kind contributions of \$2,200 from Carl Giudici and \$1,885 from Elsie  
3 Giudici on its 2009 Year-End Report.<sup>2</sup> On January 28, 2010, the Committee also paid the  
4 registration fee of \$1,664 for the vehicle to the Nevada DMV.<sup>3</sup> *Id.*

5 In addition, although contending the issues concerning whether the Nevada DMV  
6 properly registered the recreational vehicle are beyond the jurisdiction and authority of the  
7 Federal Election Commission, the response states that the Nevada DMV accepted the private  
8 lease agreement between Giudici and the Committee to register and title the recreational vehicle.  
9 *Id.* at 2 and 3. However, because of the controversy whether the Nevada DMV should have  
10 allowed a vehicle's lessee to be listed as an owner, Giudici sold the recreational vehicle to Lee  
11 Brothers RV Leasing on May 20, 2010. *Id.* at 3. The Committee then entered into a lease  
12 agreement with Lee Brothers on May 28, 2010, and paid that firm \$2,036 on May 24, 2010. *Id.*  
13 See Committee's July 2010 Quarterly Report.<sup>4</sup> The response concludes that because it had a  
14 legitimate lease agreement with Giudici and paid fair market value to rent the vehicle, the  
15 Commission should dismiss this matter.

16 **B. Legal Analysis**

17 No person shall make contributions to any candidate and his authorized political  
18 committees with respect to any election for Federal office, which in the aggregate, exceed

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<sup>2</sup> The disclosure reports also indicate that Carl Giudici made a cash contribution of \$200 to the Committee on August 24, 2009, and Elsie Giudici made an in-kind contribution of \$475 for vehicle rental to the Committee on January 26, 2010. The disclosure reports that include in-kind contributions for the vehicle rental do not provide information on how the Committee determined the rental rate of \$95 per day, nor do they indicate if the \$475 contribution was for one day or multiple days' use of the vehicle.

<sup>3</sup> Although not referenced in the response, the Committee's 2010 Pre-Primary Report discloses that the Committee also paid \$3,393.39 for "RV repairs" on April 11, 2010.

<sup>4</sup> While the Committee did not submit a copy of its lease with Lee Brothers, the payment of \$2,036 at the rental rate of \$95 per day would cover 21 days ( $\$2,036/\$95 = 21.43$ ), which would extend beyond the June 8, 2010 primary election, which Lowden lost.

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1 \$2,400. 2 U.S.C. § 441a(a). The contribution limit of \$2,400 was in effect for the 2010 election  
2 cycle. A contribution is defined to include "any gift, subscription, loan, advance, or deposit of  
3 money or anything of value made by any person for the purpose of influencing any election for  
4 Federal office." 2 U.S.C. § 431(8)(A). The term, "anything of value" includes in-kind  
5 contributions, and, unless specifically exempted, the provision of any goods or services without  
6 charge or at a charge that is less than the usual and normal charge for such goods or services is a  
7 contribution. 11 C.F.R. § 100.52(d)(1). The usual and normal charge for goods means the price  
8 of those goods in the market from which they ordinarily would have been purchased at the time  
9 of the contribution, and the usual and normal charge for services is the hourly or piecework  
10 charge for the services at a commercially reasonable rate at the time the services were rendered.  
11 11 C.F.R. § 100.52(d)(2). No candidate or political committee shall knowingly accept any  
12 contribution or make any expenditure in violation of the provisions of section 441. 2 U.S.C.  
13 § 441a(f). Each treasurer of a political committee is required to file reports of receipts and  
14 disbursements in accordance with 2 U.S.C. § 434(a). Each report shall disclose the total  
15 amount of receipts and disbursements for the reporting period and the calendar year. 2 U.S.C.  
16 § 434(b)(2) and (4).

17 While it is not clear how the Committee determined the rental rate of \$95 per day, the *Las*  
18 *Vegas Review Journal* article, attached to the Committee's response, reported that its survey of  
19 several Las Vegas rental companies showed that a new luxury recreational vehicle, of the same  
20 make and model as the vehicle leased by the Committee, would range from a low of \$50 a day in  
21 winter and up to several hundred dollars a day in the summer high season. Several Internet  
22 websites that appear to specialize in renting new, or relatively new, recreational vehicles indicate  
23 that rental rates for such recreational vehicles in Las Vegas are several hundred dollars per day.

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1 The recreational vehicle the Committee leased was, during the time-period alleged in the  
2 complaint, owned by private individuals, approximately ten years old, had a ten-month lease, and  
3 needed substantial capital improvements, which the Committee made and apparently set off  
4 against amounts it owed the lessor, and which inured to the owner of the vehicle. These factors  
5 appear to warrant a significant discount to the rental rate charged for short-term rentals of  
6 presumably new, or newer vehicles in relatively good repair. Therefore, it appears that the rental  
7 rate of \$95 per day that the Committee paid to use the recreational vehicle was within the range  
8 of the usual and normal charge for the rental of a similar recreational vehicle, and it appears that  
9 the Committee's reporting of the payments were accurate.<sup>5</sup> Accordingly, we recommend that the  
10 Commission find no reason to believe that the Sue Lowden or Sue Lowden for US Senate and  
11 Bob Beers, in his official capacity as treasurer, accepted an excessive contribution from Carl  
12 Giudici in violation of 2 U.S.C. § 441a(f), or failed to accurately disclose payments for the  
13 recreational vehicle in violation of 2 U.S.C. § 434(b). We further recommend that the  
14 Commission find no reason to believe that Carl Giudici made an excessive contribution in  
15 violation of 2 U.S.C. § 441a(a)(1)(a), and close the file in MUR 6295.

16 **III. MUR 6307**

17  
18 **A. Factual Background**

19  
20 The complaint in MUR 6307 is based on a May 27, 2010 article in the *Las Vegas Review*  
21 *Journal*, attached to the complaint, and alleges that Sue Lowden and Committee spent  
22 approximately \$18,000 in funds raised for the general election on the primary election.  
23 Specifically, the complaint alleges, based on the news article, that the Committee reported cash-

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<sup>5</sup> While the Committee does not explain why it reported Mrs. Giudici's in-kind contribution of \$475 for the recreational vehicle two weeks after it entered into the lease with Carl Giudici, and why it paid \$2,036 to Lee Brothers, the new owner of the recreational vehicle, four days before it entered into a lease with the firm, these factors do not impact our conclusion that the Committee received no excessive contribution.



1 on-hand of \$209,325, all of which was designated for the general election, but admitted that it  
2 had raised \$227,063 in general election funds. See Complaint at 1. The Committee reported  
3 these figures on its Pre-Primary Report dated May 26, 2010. The primary election, which  
4 Ms. Lowden lost, was held on June 8, 2010. The complaint also alleges that the Committee  
5 failed to report spending \$18,000 in general election funds.

6 In its response to the complaint, the Committee admits that it spent approximately  
7 \$18,000 in general election funds before the primary election on June 8, 2010, even though it had  
8 a policy in place to separate general election funds from primary election funds, but that it  
9 returned all general election funds to the contributors within three weeks after the primary  
10 election ended. Response at 3. The Committee maintains that the general election funds spent  
11 for the primary election "were not knowingly spent, but instead were a result of a cash-flow  
12 accounting error." *Id.* The Committee additionally states that since it returned the general  
13 election donations to donors within weeks of the primary election, this accounting error did not  
14 confer a benefit upon the Committee. Accordingly, the response requests that the Commission  
15 exercise its prosecutorial discretion to dismiss this matter.

#### 16 B. Legal Analysis

17 If the candidate or his or her authorized committee receives contributions that are  
18 designated for use in connection with the general election before the date of the primary election,  
19 the committee's records must demonstrate that prior to the primary election, the committee's  
20 recorded cash on hand was at all times equal to or in excess of the sum of general election  
21 contributions received less the sum of general election disbursements made. 11 C.F.R.  
22 § 102.9(e)(2). If a candidate is not a candidate in the general election, any contribution made for  
23 the general election shall be refunded to the contributors or redesignated or reattributed, as

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1 appropriate in accordance with Commission regulations. 11 C.F.R. § 102.9(e)(3); *see also*  
2 11 C.F.R. § 103.3(b)(3) (if a redesignation or reattribution is not obtained, the treasurer shall,  
3 within sixty days, refund the contribution to the contributor). Further, no candidate or political  
4 committee shall knowingly accept any contribution or make any expenditure in violation of the  
5 provisions of section 441. 2 U.S.C. § 441a(f). Each treasurer of a political committee is required  
6 to file reports of receipts and disbursements in accordance with 2 U.S.C. § 434(e). Each report  
7 shall disclose the total amount of receipts and disbursements for the reporting period and the  
8 calendar year. 2 U.S.C. § 434(b)(2) and (4).

9 The Committee admits that it spent approximately \$18,000 in general election funds  
10 during the primary election period, due to a cash-flow accounting error. Thus, it violated  
11 11 C.F.R. § 102.9(e)(2), because it failed to demonstrate that the Committee's recorded cash on  
12 hand was at all times equal to or in excess of the sum of general election contributions received  
13 less the sum of general election disbursements made. Further, by spending general election  
14 funds for the primary, the Committee may have accepted excessive contributions in violation  
15 of 2 U.S.C. § 441a(f). However, the Committee maintains that it had appropriate policies in  
16 place to separate primary and general election funds, and attributes the violation, which involved  
17 less than one percent of its general election funds, to a cash-flow accounting error. We have no  
18 information to the contrary. In addition, the Committee refunded all contributions to the general  
19 election, including those that were spent during the primary, before the sixty-day deadline after  
20 the primary election ended. *See* Committee's July 2010 Quarterly Report. Under these  
21 circumstances, we recommend that the Commission exercise its prosecutorial discretion and  
22 dismiss the allegation that Sue Lowden for US Senate and Bob Beers, in his official capacity as

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1 treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.9(e)(2) and send a cautionary letter. See  
2 *Heckler v. Chaney*, 470 U.S. 821 (1985).

3 With regard to the allegation that the Committee failed to report the spending of general  
4 election funds during the primary, the Committee reflected these expenditures in the various  
5 disbursements that it disclosed on its 2010 Pre-Primary Report. Thus, the Committee reported  
6 all disbursements as required by 2 U.S.C. § 434(b). Therefore, we recommend that the  
7 Commission find no reason to believe that Sue Lowden for US Senate and Bob Beers, in his  
8 official capacity as treasurer, violated 2 U.S.C. § 434(b).

9 As there is no information that the candidate was personally involved in the activity at  
10 issue in MUR 6307, we also recommend that the Commission find no reason to believe that Sue  
11 Lowden violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.9(e)(2). Finally, we recommend that the  
12 Commission close the file in MUR 6307.

13 **IV. RECOMMENDATIONS**

- 14 1. Find no reason to believe in MUR 6295 that Sue Lowden, and Sue Lowden for US  
15 Senate and Bob Beers, in his official capacity as treasurer, violated 2 U.S.C.  
16 § 441a(f).  
17
- 18 2. Find no reason to believe in MUR 6295 that Sue Lowden, and Sue Lowden for US  
19 Senate and Bob Beers, in his official capacity as treasurer, violated 2 U.S.C.  
20 § 434(b).  
21
- 22 3. Find no reason to believe in MUR 6295 that Carl Giudici violated 2 U.S.C.  
23 § 441a(a)(1)(a).  
24
- 25 4. Dismiss the allegation in MUR 6307 that the Sue Lowden for US Senate and Bob  
26 Beers, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R.  
27 § 102.9(e)(2), and send a cautionary letter.  
28
- 29 5. Find no reason to believe in MUR 6307 that Sue Lowden for US Senate and Bob  
30 Beers, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).  
31
- 32 6. Find no reason to believe in MUR 6307 that Sue Lowden violated 2 U.S.C.  
33 § 441a(f) or 11 C.F.R. § 102.9(e)(2).

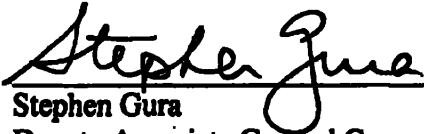
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7. Approve the Factual and Legal Analyses.
8. Approve the appropriate letters.
9. Close the file in MUR 6295.
10. Close the file in MUR 6307.

11/12/10

Date

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